

TR 1999/D20 - Income tax: deductible gift recipients - the gift fund requirement



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Draft Taxation Ruling

Income tax: deductible gift recipients – the gift fund requirement

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Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to entities endorsed or seeking to be endorsed as deductible gift recipients under Subdivision 30-BA of the *Income Tax Assessment Act 1997* ('the Act'). It explains the requirement for a deductible gift recipient to maintain a gift fund.
2. The Ruling does not apply to entities that are mentioned by name in the table in section 30-15 or in Subdivision 30-B. These gift deductible entities are not required to maintain a gift fund.

Background

3. From 1 July 2000 gifts are income tax deductible under the gift provisions of the Act (Division 30) for entities to which this Ruling applies, only if they have been endorsed by the Commissioner. If the entity is not endorsed, the donor cannot claim an income tax deduction for the gift.
4. To be endorsed, an entity must satisfy several conditions:
 - it must have an Australian Business Number ('ABN');
 - the entity must be a fund, authority or institution referred to in the gift provisions of the Act (such as public benevolent institutions, school building funds, ancillary funds, public libraries and necessitous circumstances funds), or it must operate such a fund, authority or institution; and

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- it must maintain a gift fund for the fund, authority or institution.

5. There are two types of endorsement, depending on whether the entity is, or operates, a gift deductible fund, authority or institution. For example, if an entity is a public benevolent institution in Australia it would apply for endorsement in its own right. If a school is an entity and operates a school building fund, or a local council operates a public library, it would apply for endorsement only in relation to its fund or library.

6. An entity's endorsement is publicly available through the Australian Business Register ('ABR'). If an entity ceases to be entitled to endorsement, it must tell the Australian Tax Office (ATO). The Commissioner may revoke the endorsement of entities that cease to be entitled.

Ruling

7. An entity that does not maintain a gift fund is not entitled to be endorsed as a deductible gift recipient: paragraphs 30-125(1)(c), (2)(d) and subsection 30-125(4). If an entity is a deductible gift recipient in relation to more than one fund, authority or institution it operates, it must maintain a separate gift fund for each fund, authority or institution.

8. We will not endorse an entity with effect from a date earlier than when it started to maintain a gift fund.

Setting up a gift fund

9. The Act does not prescribe how a gift fund is to be constituted. However, as the fund must be maintained and used for the principal purpose of the fund, authority or institution, gifts and any money received because of the gifts should be separately identified and recorded. Similarly, separate identification and recording of how the fund is used demonstrate that the fund is being used for the principal purpose of the fund, authority or institution.

10. The gift fund should be identifiable within the deductible gift recipient. It does not have to be identifiable by parties external to the deductible gift recipient.

11. A gift fund does not need to be a public fund.

12. Where a deductible gift recipient is a public fund or where it operates a public fund, the existence of the public fund itself does not necessarily satisfy the gift fund requirement. If the public fund only receives gifts and their accretions and the appropriate winding up rules

exist, the public fund itself may be the gift fund. In this case there would be no need for a separate gift fund. However, in all other situations a public fund must maintain an identifiable gift fund.

13. Public funds that satisfy item 6.1.1 in section 30-55 (environmental organisations) or item 12.1.1 in section 30-100 (cultural organisations) meet the gift fund requirement if they meet the winding up requirements (see paragraphs 30-31).

Purpose of the gift fund

14. The gift fund must be maintained for the principal purpose of the fund, authority or institution: subsection 30-125(4). The principal purpose of a fund, authority or institution is determined by weighing all relevant features, primarily its governing documents (especially the objects) and activities.

15. We accept that the principal purpose of a fund, authority or institution includes purposes that are incidental or ancillary to that principal purpose. However, where a gift fund is maintained only for an incidental or ancillary purpose of a fund, authority or institution it does not satisfy the gift fund requirement. Nor does a gift fund operated for various purposes, only one of which is the principal purpose of the fund, authority or institution.

Operating a gift fund

16. Maintaining a gift fund entails banking money separately and specifically identifying items of property. The money and property of the gift fund must be clearly separate from that of the rest of the entity and accounted for accordingly. Details of the use of the money or property for the principal purpose of the fund, authority or institution should be noted.

17. Receipts for gifts should show the name of the fund, authority or institution and the ABN (if any) of the deductible gift recipient: paragraph 30-228(a). The name of the gift fund is not required.

Money or property received by a gift fund

18. Gifts of money or property that are received by a deductible gift recipient or for its fund, authority or institution, as the case may be, must be added to the gift fund: paragraph 30-125(4)(a). All money received because of such gifts must be credited to the gift fund: paragraph 30-125(4)(b). The gift fund cannot receive any other money or property: paragraph 30-125(4)(c).

19. All gifts made to the fund, authority or institution must go to the gift fund. It is not necessary that the gifts are income tax

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deductible to the donor. Bequests and distributions from charities or other deductible gift recipients, made for the applicable purposes, must go to the gift fund. However, gifts of property of negligible value (such as used clothes left in a drop-box) do not need to be accounted for. Proceeds of the sale of such property from the gift fund must nonetheless be credited to it.

20. Government grants, receipts from sponsorships or commercial activities, proceeds of raffles, charity auctions, dinners and the like are not to go to the gift fund because they are not gifts. To be a gift, the money or property must be transferred voluntarily and the donor must not receive an advantage of a material character in return. A donor would not be taken to have received a material benefit if, in acknowledgment for making a donation, the donor is given something of trifling or insubstantial value such as a sticker or plastic lapel badge.

21. Money received because of gifts includes proceeds of sale of gifted property, and investment returns from gifted money or property that continues to be part of the gift fund. Where gifted property is transferred out of a gift fund to the fund, authority or institution and used in carrying out its principal purpose and the property is then sold, the money received from the sale does not have to be credited to the gift fund. However, the original transfer must be accounted for.

22. If money or property is incorrectly added to the gift fund, it is to be removed as soon as practicable, with the accounts adjusted, where necessary, and noted accordingly. Absence of practices or procedures which minimise the risk of inappropriate amounts being added to the fund may indicate it is not being maintained as a gift fund.

23. It is not necessary for the gift fund requirement that gifts of property be attributed a value when they are registered in the books of the gift fund.

Uses of gift fund

24. A gift fund must be used only for the principal purpose of the fund, authority or institution: subsection 30-125(5). It is a question of fact whether a gift fund has been used only for the principal purpose of the fund, authority or institution. Where a gift fund transfers money or property to the fund, authority or institution for its current and continuing use, we do not expect the gift fund to trace them through to their ultimate use. However, the transfer of money or property to the fund, authority or institution is not conclusive where it is then used for the private benefit of associates, accumulated excessively, or transferred for other purposes.

25. While gift funds may usually act only as a conduit for passing on and accounting for gifts, this need not be their only function. Other disbursements could include paying for purchases of property or services for use by the fund, authority or institution, purchases of property to be made available for use by the fund, authority or institution, and meeting obligations of the fund, authority or institution. A gift fund might finance fund raising.

26. Where an entity is a deductible gift recipient in relation to a fund, authority or institution it operates, the gift fund cannot be used for other purposes of the entity. If such a deductible gift recipient operates more than one fund, authority or institution, a gift fund is not to make transfers to the other funds, authorities or institutions.

27. The gift fund may invest property. However, excessive accumulation may indicate it is not being used only for the principal purpose of the fund, authority or institution. This could also be the conclusion if investments are not made on an arm's length basis.

28. Reasonable costs of managing a gift fund may legitimately be charged to it. These costs include such inevitable and ancillary items as bank charges, stationery costs and accounting and audit fees relating expressly to the gift fund. The fees paid for professional direction of a fund raising program also can be charged against a gift fund.

29. When money is not banked before being given over for the purposes of the fund, authority or institution, it must be properly accounted for by the gift fund.

Winding up of gift fund

30. If a gift fund is wound up, or if endorsement is revoked, the Act contemplates that the surplus assets of the gift fund must be transferred to a gift deductible fund, authority or institution: subsections 30-125(6) and (7). There must be such a requirement in a law, or in the deductible gift recipient's constituent document or governing rules: subsection 30-125(6). The requirement must specify that the transfer is to occur at the earlier of the gift fund being wound up and the revoking of endorsement. The Act does not prescribe the wording for a deductible gift recipient's constituent document or governing rules. However, it must be apparent from the wording that the surplus can go only to funds, authorities or institutions to which deductible gifts can be made.

31. If an entity is a deductible gift recipient in relation to more than one fund, authority or institution it operates, the transfer may be made to another of its gift funds.

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Consequences of not maintaining a gift fund

32. An entity that is endorsed as a deductible gift recipient loses its entitlement to be endorsed if it is not maintaining a gift fund. However, if the failure is minor, of a merely administrative nature and not intentional, and is rectified in a short time, we will not revoke endorsement.

33. In other cases, where a gift fund is not being maintained, the entity must notify the ATO: section 30-160. The Commissioner may revoke endorsement from a day specified by the Commissioner: section 30-170. This applies for all revocations including those following notification by the entity that it has ceased to be entitled to endorsement.

Date of effect

34. This Ruling will apply from the time *A New Tax System (Tax Administration) Act 1999* receives Royal Assent and Schedule 7, which inserts Subdivision 30-BA in the Act, becomes operable.

Explanations

Date of endorsement

35. The Act allows the ATO to endorse an entity as a deductible gift recipient from any date: section 30-145. However, only an entity that is entitled to endorsement can be endorsed: section 30-120. We cannot endorse an entity before it has satisfied all conditions to be entitled. Accordingly, if an entity meets all the conditions but not the gift fund requirement, we cannot endorse it as a deductible gift recipient.

Setting up a gift fund

36. The setting up of a gift fund may be documented in the deductible gift recipient's constituent documents or there may be separate rules governing its operations. While such documents are not required by the Act, if there is no documentation evidencing its existence, purpose and operations, the entity may have difficulty in demonstrating that it in fact maintained a gift fund for the required purpose. A gift fund should not be constituted as a separate entity. Rather, it should be part of the deductible gift recipient.

37. A gift fund may be set up as a public fund but this is not necessary. Many types of deductible gift recipients are required to be

public funds, for example necessitous circumstances funds (item 4.1.3 in section 30-45), school building funds (item 2.1.10 in section 30-25) and ancillary funds (item 2 in the table in section 30-15). Taxation Ruling TR 95/27 explains that for a public fund to be 'public', it is necessary that the public participants in the administration and that the fund intends to receive, and does receive, contributions from the public. While gift funds are set up with the expectation of receiving gifts it is not necessary that the public participates in their management.

38. Two gift funds would be needed if an entity was to be both a deductible gift recipient in its own right and in relation to a fund, authority or institution it operated. For example, a public university could be a deductible gift recipient (item 2.1.1 of section 30-25) and be a deductible gift recipient in relation to its public library (item 12.1.2 of section 30-100). There would need to be a separate gift fund for each.

39. The legislative provisions for public funds maintained by environmental organisations (item 6.1.1 in section 30-55) and cultural organisations (item 12.1.1 in section 30-100) are substantially the same as for the gift fund requirement. Paragraphs 30-265(2)(a)-(c) (environmental organisations) and 30-300(3)(a)-(c) (cultural organisations) use the same wording as 30-125(4)(a)-(c) (gift fund requirement). Accordingly, if environmental or cultural public funds meet those conditions and the winding up requirements (see paragraphs 30 and 31) they also meet the gift fund requirement. There is no need for them to set up a separate gift fund.

40. Gifts received by a fund, authority or institution before it set up its gift fund do not need to be transferred to the gift fund. For example, if a public benevolent institution set up its gift fund in May 2000, it would not need to transfer gifts received before that date to the gift fund.

Purpose of the gift fund

41. Where an entity is endorsed as a deductible gift recipient in relation to a fund, authority or institution it operates, the gift fund must be only for that fund, authority or institution. For example, if a municipal council was not endorsed in its own right and only in relation to its public library, there would need to be a gift fund for donations to the public library. A fund for both the public library and the municipal baths would not meet the gift fund requirement.

42. For an entity that is endorsed as a deductible gift recipient in its own right, the fund's purpose must be the same as the principal purpose of the entity. In some cases, funds are set up to collect gifts for a particular object or activity that would not, if viewed in isolation,

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be an integral part of the statutory purpose. For example, lobbying or promoting sociability among members would not, as such, be the providing of public benevolence (item 4.1.1 in section 30-45) or the relieving of necessitous circumstances (item 4.1.3 in section 30-45). Funds set up to collect gifts only for such limited activities would not satisfy the gift fund requirement.

Operating a gift fund

43. The Act does not prescribe how a gift fund is to be maintained. Approaches vary, depending on the internal accounting policies of deductible gift recipients, the types of gifts they receive and the uses to which the gift fund is put. Essential to the running of a gift fund is the separate recording of all gifts (through a bank account or other cash management system for money, and a register for property), transfers from the gift fund (whether as payments, disbursements or for use by the fund, authority or institution) and investment returns on money or property that has not been transferred out.

Examples

Setting up a gift fund

Example 1

44. The Thackery¹ School operates a school building fund (item 2.1.10 in section 30-25) and a public library (item 12.1.2 in section 30-100). It maintains a fund, called the Thackery Donations Fund, which receives all gifts to the school.

45. The Thackery School does not satisfy the gift fund requirement in relation to either the school building fund or the public library. The Thackery School is not entitled to be endorsed as a deductible gift recipient. To overcome this, it should set up two separate gift funds, one for the school building fund and one for the public library.

Example 2

46. The Tusso Foundation is a public fund under item 2 of the table in section 30-15 (commonly called an ancillary fund). Its only activities are soliciting gifts, investing them and passing them on to deductible gift recipients.

47. The Tusso Foundation itself can satisfy the gift fund requirement. It does not need to set up a separate gift fund.

¹ The names in the **Examples** are taken from the First Fleet.

Example 3

48. The Arscott Trust is a public benevolent institution (item 4.1.1 in section 30-45). It opens a bank account with the name Arscott Gift Fund to receive gifts. In its accounting system, it accounts for all gifts - of money and property - through the Arscott Gift Fund. They are then transferred to other accounts of the Arscott Trust for use for its principal purpose.

49. The Arscott Trust is maintaining a fund which can be a gift fund.

Purpose of the gift fund***Example 4***

50. The Bloedworth Service is a public benevolent institution (item 4.1.1 in section 30-45) that operates a hostel and a detox centre through its two divisions. For each division it has a Donation Fund to receive gifts only. Each Donation Fund then 'transfers' the gifts to its division for hostel and detox purposes respectively.

51. We accept that the Donation Funds are a fund maintained for the principal purpose of the Bloedworth Service. The operation of the Donation Funds - which together can be accepted as a fund - is for the benevolent purposes of the Service.

Example 5

52. The Limeburner Association is a public benevolent institution (item 4.1.1 in section 30-45) that cares for homeless teenagers. Its care activities are wholly funded by government. One of its ancillary objects is to campaign for law change about government allowances. All gifts to the Association go to its Fighting Fund and are used for this lobbying.

53. Although the Limeburner Association maintains a fund to which all gifts are made, they are not applied for its principal purpose. It does not meet the gift fund requirement.

Operating a gift fund***Example 6***

54. The Hylids Society operates a public art gallery (item 12.1.4 in section 30-100). It receives gifts, entrance fees and sale proceeds from its gallery gift shop. All amounts received at the gallery - whether gifts, fees or sales - are banked into the Hylids Gift Account.

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55. The Hylids Society is not maintaining a gift fund as it is not dealing with gifts separately. The Society is not entitled to endorsement as a deductible gift recipient.

Money or property received by a gift fund

Example 7

56. The Marshall Association is a public fund for the welfare of members of the armed forces (item 5.1.2 in section 30-50). It runs a gift fund. It is bequeathed a hall and a house, which are recorded by the gift fund. The house is held by the gift fund for investment. The hall is held by the Association as a centre for activities by soldiers, and let when not in use. The gift fund shows all investment returns as part of the gift fund, but does not show the lettings from the hall.

57. The fund is satisfying the gift fund requirements. Because the house is being held as part of the gift fund, the investment income is also be part of the gift fund. Because the hall is not being held by the gift fund - that is, it has been 'transferred' out of the gift fund for the current and continuing use of the Association for its principal purpose - the lettings do not form part of the gift fund. The gift fund will have recorded the hall as having been 'transferred' out to the Association.

Example 8

58. The Silverthorn Bureau is a necessitous circumstances fund (item 4.1.3 in section 30-45). After running a charity ball all proceeds were banked in the account of the Bureau's gift fund. In preparing the treasurer's monthly report the mistake was discovered. The money was then transferred to the Bureau's general bank account. The rectification was noted in the gift fund's books.

59. Because the mistake was minor and the Bureau had a system that would identify errors, it rectified the deposit in a short time and noted the accounts, we would not revoke the Bureau's endorsement or require it to notify the ATO.

Uses of gift fund

Example 9

60. The Owles Group is an approved research institute (item 3.1.1 in section 30-40) whose object is to carry out scientific research on electrical engineering. Its employees carry out the research at its laboratory. The Group has a gift fund called the Owles Donation Fund. The gifts are used to pay leasing charges on cars the College provides to its employees. The Donation Fund makes and records the payments.

61. The gift fund is being used for the principal purpose of the Owles Group because the remuneration of its employees is merely a part of carrying out the research.

Example 10

62. The Wisehammer Museum is a public museum (item 12.1.3 in section 30-100). It maintains a Museum Gift Fund for all gifts of money or property. When gifted artefacts are received by the Museum they go immediately to the curator for authentication, assessment, etc. The only action by the Museum Gift Fund is to identify the artefacts by recording their characteristics, their date of receipt and that they are being held for museum purposes.

63. The gifts are being used for the purpose of the Wisehammer Museum. The recording by the Museum Gift Fund is sufficient. There is no need for a physical 'possession' and 'transfer' of the artefact by the Gift Fund.

Winding up of gift fund***Example 11***

64. Flarty Relief Service is a public benevolent institution (item 4.1.1 in section 30-45). It operates a gift fund called the Flarty Donation Account. The Service has added a clause to its rules which states: 'If the Flarty Donation Account is wound up or if the endorsement (if any) of the Flarty Relief Service as a deductible gift recipient is revoked, any surplus assets of the Flarty Donation Account remaining after the payment of liabilities attributable to it, shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made'.

65. This clause in the rules of the Flarty Relief Service satisfies the requirements of subsections 30-125(6) and (7) (see paragraphs 30 and 31).

Your comments

66. We invite you to comment on this Draft Taxation Ruling. We are allowing 10 weeks for comments before we finalise the Ruling. If you want your comments to be considered, please provide them to us within this period.

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| Comments by Date: | 3 March 2000 |
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Detailed contents list

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| <i>Previous draft:</i> | - ITAA1997 30-50 item 5.1.2 |
| Not previously issued in draft form | - ITAA1997 30-55 item 6.1.1 |
| | - ITAA1997 30-100 item 12.1.1 |
| | - ITAA1997 30-100 item 12.1.2 |
| <i>Related Rulings/Determinations:</i> | - ITAA1997 30-100 item 12.1.3 |
| TR 95/27 | - ITAA1997 30-100 item 12.1.4 |
| | - ITAA1997 30-120 |
| <i>Subject references:</i> | - ITAA1997 30-125(1)(c) |
| - gifts and donations | - ITAA1997 30-125(2)(d) |
| - gifts to organisations | - ITAA1997 30-125(4) |
| | - ITAA1997 30-125(5) |
| <i>Legislative references:</i> | - ITAA1997 30-125(6) |
| - ANTS(GST)TAA1999 Schedule 7 | - ITAA1997 30-125(7) |
| - ITAA1997 Division 30 | - ITAA1997 30-145 |
| - ITAA1997 Subdivision 30-B | - ITAA1997 30-160 |
| - ITAA1997 Subdivision 30-BA | - ITAA1997 30-170 |
| - ITAA1997 30-15 | - ITAA1997 30-228(a) |
| - ITAA1997 30-15 item 2 | - ITAA1997 30-265 |
| - ITAA1997 30-25 item 2.1.1 | - ITAA1997 30-300 |
| - ITAA1997 30-25 item 2.1.10 | |
| - ITAA1997 30-40 item 3.1.1 | <i>Case references:</i> |
| - ITAA1997 30-45 item 4.1.1 | |
| - ITAA1997 30-45 item 4.1.3 | |

ATO references:

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